Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b)	)	MM Docket No. 01-62
Table of Allotments	)	RM - 10053
FM Broadcast Stations	)	RM - 10109
(Ardmore, Brilliant, Gadsden, Moundville,	)	RM - 10110
Pleasant Grove, Scottsboro, Trussville,	)	RM - 10111
Tuscaloosa and Winfield, Alabama	)	RM - 10112
Columbus and Okolona, Mississippi	)	RM - 10113
and McMinnville, Pulaski and	)	RM - 10114
Walden, Tennessee)	)	RM - 10116

To: Chief, Allocations Branch
Policy & Rules Division
Mass Media Bureau

SUPPLEMENTAL COMMENTS

Capstar TX Limited Partnership ("Capstar"), licensee of Station WQEN(FM), Gadsden, Alabama, WENN(FM), Trussville, Alabama, WZHT(FM), Troy, Alabama and WRTR(FM), Tuscaloosa, Alabama; Jacor Licensee of Louisville II, Inc. ("Jacor"), licensee of Station WTRZ-FM, McMinnville, Tennessee; and Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Station WKGL, Russellville, Alabama (the "Joint Parties") by their counsel, hereby submit these Supplemental Comments to respond to the Further Reply Comments of Cox Radio, Inc., filed on May 31, 2001.

1. The Joint Parties have proposed a series of interrelated modifications to the FM Table of Allotments that would provide substantial service gains and five new first local services. Cox has counterproposed a single Class A allotment to a small community (Springville, Alabama) which is clearly inferior to the Joint Parties' proposal under the Commission's well-established allotment

priorities.[1] Perhaps as a way to divert the Commission's attention from the central issue -- the comparative merit of the various proposals under applicable law -- Cox has raised a series of peripheral arguments, all of which miss the mark. First, Cox attempted to show that portions of the Joint Parties' proposal are contingent upon other actions of the Commission, when, as the Joint Parties have demonstrated, there is no contingency.[2] Cox then attempted to discredit one of the communities chosen by the Joint Parties for a first local service by applying the wrong law.[3] Now, in its Further Reply Comments, Cox calls into question three of the Joint Parties' allotment reference sites. However, as before, Cox misreads and misapplies the law.

2. Cox states that the Joint Parties' proposal to allot Channel 288C2 to Hoover, Alabama, must be rejected because "local zoning restrictions and FAA regulations likely will prevent Petitioners from constructing a tower at the proposed site coordinates." Cox Further Replies at 5. This statement is incorrect on the law and incorrect on the facts. An allotment proposal is acceptable as long as there is a "reasonable expectation that a useable site is available complying with the minimum spacing requirements." *San Clemente, California*, 3 FCC Rcd 6728 at para. 6 (1988). *See also Creswell, Oregon*, 3 FCC Rcd 4608 at para. 3 (1988) ("reasonable assurance that transmitter sites are available"); *Sebring and Miami, Florida*, 10 FCC Rcd 6577 at para. 6 (1995) ("reasonable likelihood that a site will be available"). "Reasonable assurance" in an allotment

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1. *See* Reply Comments of the Joint Parties in the above-captioned proceeding at para. 2-6 (May 31, 2001).

2. *See id.* at para.22-24.

3. *See id.* at para 28 (Tuck factors are inapplicable when the station already covers the urbanized area and the new community is outside the urbanized area).

context requires something *less* than even a *modest* probability of a final site acquisition. *Mount Wilson FM Broadcasters v. FCC*, 884 F.2d 1462, 1463 (D.C. Cir.1989). Even if the proposed transmitter site later turns out to be unavailable, the allotment is properly made as long as the mere possibility of its availability exists at the allotment stage. *San Clemente, California, supra.*

3. For example, in *Johannesburg and Edwards, California*, 15 FCC Rcd 15801 (2000), the opponent argued that the proposed transmitter site was not available and that even if it were available the site was too close to an Air Force base to obtain FAA approval. The FCC stated:

> "[w]ith respect to the issue of transmitter site availability, Petitioner correctly states that this issue is only addressed at the allotment stage in unusual circumstances, which do not exist in this case. The question of city-grade coverage is not at issue here, and the site is not within the boundaries of the military base itself. We take Petitioner's representations that its site was proposed in good faith and will not address the issue further.

4. The proposed allotment at Hoover easily satisfies allotment criteria. The reference coordinates are at the site of a multistory commercial building in excess of 200 ft. height above ground upon which an antenna and tower structure can be permissibly located under the Hoover City Code. The zoning consultant engaged by Cox states that his opinion is "based on a residential density," but the proposed reference site, in fact, is located on a commercially zoned property. *See* Report of Mark Dinan, attached as Exhibit A hereto. The Cox zoning consultant's report is devoid of any indicia of reliability. The report of Mark Dinan and the relevant zoning regulations are attached hereto as Exhibit A. The report clearly indicates that zoning regulations would *not* prohibit a structure on which an antenna could be placed and provide an unobstructed 70 dBu signal to Hoover.

5. Having demonstrated the existence of a tower site meeting the Commission's spacing rules with reasonable assurance of its availability, the Joint Parties are entitled to a *presumption* that a technically feasible site is available. *See Sebring and Miami, Florida*, 10 FCC Rcd 6577 at para. 6 (1995); *San Clemente, California*, 3 FCC Rcd 6728 at para. 6 (1988); *Creswell, Oregon*, 3 FCC Rcd 4608 at para. 3 (1988). To overcome this presumption, Cox must demonstrate that a technically feasible site is not possible for the Hoover allotment. In the rare cases in which the Commission has denied an allotment based on the unavailability of a technically feasible reference site, the evidence demonstrated that *no* transmitter site could satisfy FAA regulations and the Commission's spacing criteria. *See Sebring and Miami, Florida, supra* ("there are no satisfactory sites available"); *Moncks Corner, Kiawah Island, and Sampit, South Carolina*, 11 FCC Rcd 8630 (1996) ("we do not consider marshy area to constitute an available site"). That is hardly the case here. In addition to the Galleria building, there is a large area in which a transmitter could potentially be located in compliance with the Commission's rules. *See* Exhibit E.

6. Cox's aviation consultant raises no concerns regarding construction of a tower, beyond the potential for electromagnetic interference ("EMI") and the obvious need to coordinate any new tower construction with the FAA. The Commission has held under virtually identical circumstances that such statements do not rebut the presumption that a technically feasible site is available. *See Johannesburg and Edwards, California*, 15 FCC Rcd 15801 at para. 3 (2000) (allegations that proposed transmitter site was unavailable and would not receive FAA approval were insufficient to overcome presumption); *Pitkin, Louisiana, et al.*, 15 FCC Rcd 17311 at para 6 (2000) (airspace consultant's concerns of potential intermodulation interference and excess tower height were insufficient to overcome presumption). The attached statement of Clair M. Billington, an FAA

airspace consultant, confirm that the FAA would likely approve a tower of the proposed height at the Hoover allotment reference coordinates. *See* Exhibit B. Moreover, any concerns regarding predicted or actual EMI can be mitigated by a variety of means. *See* Statement of Jeff Littlejohn, attached as Exhibit C.

7. With respect to the Joint Parties' proposal to allot Channel 289C0 to Troy, Alabama, Cox states that at the proposed reference coordinates a tower could not be constructed at a height necessary to obtain Class C0.status. Cox Further Replies at 7. However, the report of Clair M. Billington, attached as Exhibit B, demonstrates, to the contrary, that FAA concerns with regard to a tower of the proposed height at the allotment reference coordinates (11 miles from the Troy Municipal Airport) could be satisfied by a change in the direction of the holding pattern turns and the minimum vectoring altitude used at the airport, and the addition of high-intensity lighting. *See also* Engineering Statement, Exhibit E.

8. It bears repeating that at the allotment stage the Commission presumes that a technically feasible site is available, and will only deny an allotment if it can be shown that *no* such site is available. *See Sebring and Miami, Florida, supra.* The report of Clair Billington offers reasonable assurance of the availability of a site at the particular reference coordinates chosen for the Troy allotment. However, should the circumstances not turn out as expected, there is a large area-to-locate for the Troy allotment within which a suitable site can certainly be found. *See* Engineering Statement, Exhibit E. A portion of this area-to-locate encompasses the area in which Cox's airspace consultant concedes that a tall tower up to 1,249 feet above ground level can be constructed in compliance with FAA regulations. See Exhibit E.

9. With respect to the Joint Parties' proposal to allot Channel 280C2 to Okolona, Missisippi, Cox states that at the proposed reference coordinates a tower could not be constructed at the height necessary to provide 70 dBu coverage to the community of Okolona. Cox Further Replies at 6. Cox's comments with respect to Okolona should be stricken from the record. Unlike the proposals for Hoover and Troy, discussed above (which were advanced only in comments), the Okolona proposal was advanced in the Joint Parties' initial proposal and placed on public notice. Cox could have, but did not, address the Okolona proposal in its comments. Instead, it addressed it for the first time in reply comments, which is a misuse of Commission processes.[4] In any event, however, Cox has not met the substantial burden of demonstrating that no technically feasible transmitter site is available for the Okolona allotment. The proposed allotment site was proffered as the licensee's site preference, but there are ample alternative sites available. Indeed, there is a large area-to-locate in which a transmitter can be placed while remaining in compliance with the Commission's spacing rules. That area contains at least one existing tower, and a transmitter placed at that location would provide coverage over Okolona as shown in Exhibit E.

10. None of the cases cited by Cox support its theory that the Hoover, Okolona, and Troy proposals are somehow defective. Each of the allotment proposals offers a large area in which a suitable transmitter can be located. *See* Exhibit E. The Joint Parties assure the Commission that in view of the large usable site areas available for each allotment and the preliminary analysis the Joint Parties have furnished, the overall proposal can be implemented smoothly and rapidly.

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4. *See* 47 C.F.R. § 1.415(c) ("A reasonable time will be provided for filing reply comments *in reply to the original comments* . . .") (emphasis added).

11. As a final matter, Cox states that the Joint Parties' choice of alternate Channel 267A for Linden, Tennessee faces line-of-sight obstructions that would impede the reception of a 70 dBu signal over all of Linden. Cox Further Replies at 9-10. First, even if this were true, it would not be a defect in the Joint Parties' proposal. The Joint Parties advanced the alternate channel as a way of accommodating both Buffalo River Broadcasters' proposal for a first local service at Linden and the Joint Parties' proposal for a first local service at Ardmore, Alabama. If no alternate channel can be found, the two proposals will remain in conflict and must be compared under the Commission's allotment priorities. As set forth in their Reply Comments, the Joint Parties are confident that Ardmore, the larger of the two communities, will prevail. More importantly, however, as indicated in the Engineering Statement, if the substitution of Channel 267A is made at a reference point just 0.5 km north, the path to Linden will be clear of obstructions. See Engineering Statement, Exhibit E. The public interest clearly favors the use of an alternate channel to remove conflicts between allotment proposals wherever possible. Allotting Channel 267A to Linden removes the conflict with Ardmore and allows both proposals to be granted.

12. The Joint Parties' proposal offers benefits that cannot be matched even when the various other counterproposals in this proceeding are combined. While it involves changes to a number of stations, it offers great flexibility in its implementation by virtue of the large areas in which transmitter sites for the new allotments can be located. As a result, any concerns regarding the availability of suitable sites can quickly be resolved if and when they arise. The Joint Parties' preliminary analysis in the preparation and filing of the proposal is far more extensive than is required at the allotment stage, and has demonstrated the fundamental soundness of the individual changes and the proposal as a whole.

WHEREFORE, for the above stated reasons, the Joint Parties' amended proposal as filed on April 24, 2001 should be granted.

Respectfully Submitted,

CAPSTAR TX LIMITED PARTNERSHIP
JACOR LICENSEE OF LOUISVILLE II, INC.
CLEAR CHANNEL BROADCASTING LICENSES, INC.

By: _____

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Their counsel

Dated June 22, 2001

EXHIBIT A

MARK DINAN
Commercial & Investment Real Estate

June 13, 2001

Magalie R. Salas
Secretary
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Dear Ms. Salas:

I have been involved in the sale, leasing and development of commercial real estate for over ten years and have worked closely with City of Hoover building and zoning personnel on a number of projects involving interpretation and application of the zoning code to properties where a variance or re-zoning might be necessary.

I have reviewed Article XIV, Telecommunications Regulations, of the Hoover Zoning Regulations and I have reviewed the zoning maps on display at the Hoover City Hall for the reference coordinates of 33-22-41 NL and 86-48-35 WL. These coordinates would place the location of the proposed structure directly on top of the Galleria, a 14-story building in excess of 200 feet in height located in a commercially zoned area.

I see nothing in the regulations or on the zoning maps that would prohibit placement of a tower structure and antenna at that location. The structure could be located on the property without a special exception subject to compliance with certain standard requirements and conditions set forth in the Hoover Zoning Regulations. These requirements and conditions may limit the height of a tower structure, but they contain no outright prohibition.

Often, there is some grey area or some doubt about the application of the zoning regulations, or a property use or a variance, but in the case of this proposed tower structure, the regulations are crystal clear as to the permissibility of the proposed tower structure and its location.

Sincerely yours,

Mark Dinan, CCIM

3245 Garden Lane ✦ Birmingham, Alabama 35242 ✦ Office: (205) 980-3434 ✦ Fax: (205) 980-3466

ARTICLE XIV. TELECOMMUNICATIONS REGULATIONS

Sec. 1.0. Purpose.

In order to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community, these regulations are necessary in order to (1) facilitate the provision of wireless telecommunications services to the residents and businesses of the city; (2) minimize adverse visual effects of towers through careful design and siting standards; (3) avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and (4) encourage and maximize the use of existing and approved towers, buildings and other structures to accommodate new wireless telecommunications antennas in order to reduce the number of towers needed to serve the community.
(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 2.0. Applicability.

This article shall apply to antennas, towers and other supporting structures which are integral to the principal use of the premises or which are a separate business from the principal use of the property, including, but not limited to: Commercial radio and television transmission antennas, television receiving antennas for cable television systems, telecommunications antennas, and other antennas which are not an accessory use of the premises. All such uses shall be a special exception use, except the following uses which shall be a permitted use in all zoning districts.

A. Installation of antennas on existing towers where the tower height is not increased and all accessory structures and uses are located within the existing tower compound.

B. Installation of antennas on power poles where the height of the pole is not increased and accessory cabinets and boxes have a volume of less than two (2) cubic feet.

C. Installation of antennas owned by public utilities which are accessory to: remote terminal units serving pad mounted switch gear, remote switch controllers and similar telemetry antennas; provided the antenna is attached to a power transmission or distribution pole and does not exceed the height of the pole, or the antenna is attached to a building and does not extend more than ten (10) feet above the roof line of the building or the antenna is ground mounted and does not exceed twenty (20) feet in height. Said antennas shall also be exempt from the permitting requirements of section 10.0 of this article.

D. Installation of antennas which are accessory to supervisory control and data acquisition facilities located within an electric power substation, provided the antenna does not exceed the height of the poles or substation structure. Said antennas shall also be exempt from the permitting requirements of section 10.0 of this article.

E. Installation of antennas on concealment structures, except concealment towers, where the antenna is not visible from off the premises and the accessory cabinet has a volume of less than forty (40) cubic feet or is not visible from off the premises.

F. Installation of antennas on buildings which comply with all of the following conditions.

1. The building is not located in a single family residential district.
2. The property is not subject to a conditional use, variance or other zoning restriction which exceeds the requirements of the zoning ordinance.
3. The antenna does not exceed the maximum building height in the zoning district nor extend more than twelve (12) feet above the roof line of the building.
4. The accessory cabinet does not exceed forty (40) cubic feet in volume or is located where it is not visible from off the premises.

(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 3.0. Availability of suitable existing towers or other structures.

No new towers, which are a special exception under the terms of this article, shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the city that no existing tower or structure can accommodate the applicant's needs.
(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 4.0. Principal uses to be on lots.

All telecommunication towers and other supporting structures which are not an integral part of the principal use of the premises shall be the principal use of the premises on which they are located and shall be located on a separate lot. Because of the unique nature of these structures, said lots shall be exempt from the requirement to have principal frontage upon a public street, any minimum lot area or width requirements and any setback requirements of the zoning district where they are located. However, the lot for any telecommunications tower shall be large enough to accommodate the tower and accessory structures of the applicant, as well as the accessory structures of at least one additional co-locating service provider.
(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 5.0. Setbacks.

Towers shall be placed no closer than a distance equal to the height of the tower from any dwelling located in the A-I, R-E, E-1, E-2, R-1, R-2, R-3, PRD, PR-I or RT-4 zoning district. However, because of the unique nature of telecommunications facilities, other required setbacks from property lines shall be determined on an individual basis by the board of adjustment as part of the special exception process. The board shall consider the following factors when establishing minimum setbacks.

A. The type of telecommunications facility;

B. Relationship to other properties and buildings;

C. Relationship to the public right-of-way;

D. Size of the subject lot or parcel;

E. Accessibility for public safety and other purposes; and

F. Other factors which effect the telecommunications facility, surrounding property and community at large.

(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 6.0. Aesthetics and lighting.

A. Towers shall either maintain a galvanized steel finish, or subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness.

B. The design of the buildings and accessory structures and uses shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the telecommunication facilities to the natural setting and built environment.

C. If an antenna is installed on a structure other than a tower, the antenna and accessory uses and structures must be of a color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related facilities as visually unobtrusive as possible.

D. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the city may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting must be shielded or directed to the greatest extent possible so as to minimize the amount of light that falls onto nearby properties, particularly residences.

E. No portion of any antenna array may extend beyond the property line.

F. Accessory buildings, cabinets and structures shall not exceed sixteen (16) feet in height, and shall be compatible with the surrounding area.

G. The city may require a special design of any telecommunications facility where findings of particular sensitivity are made.

(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 7.0. Federal requirements.

All towers and antennas must meet or exceed the current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owners expense.

(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 8.0. Building codes and safety standards.

The owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes, the applicable standards for towers that are published by Electronic Industries Association as amended, and all applicable codes adopted by the city.

A. In addition to any other applicable standards and requirements, the following shall apply to all towers and telecommunications facilities:

1. Sufficient anti-climbing measures must be incorporated into each facility to reduce potential for trespass and injury.

2. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be quipped with an appropriate anticlimbing device.

3. At least ten (10) feet of horizontal clearance must exist between any antennas and any power lines, unless more clearance is required to meet Alabama Public Service Commission standards.

4. All towers and telecommunications facilities must be designed and/or sited so that they do not pose a potential hazard to nearby residences or surrounding properties or improvements. Any tower shall be designed and maintained to withstand without failure, the maximum forces expected from wind, hurricanes, and other natural occurrences, when the tower is fully loaded with antennas, transmitters, and other telecommunications facilities, and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the building official prepared by a structural engineer licensed in the State of Alabama describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided via submission to the building official at least every five (5) years of an inspection report prepared by an Alabama registered structural engineer indicating the number and types of antennas and related telecommunications equipment actually present, and indicating the structural integrity of the tower. Based on this report, the building official may require repair of, or if a serious problem exists, removal of the tower or any telecommunications facilities.

B. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of a tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within said thirty (30) days, the governing authority may remove such tower at the owners expense.

(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 9.0. Radio frequency standards.

All applicants shall comply with federal standards for a radio frequency emissions. Within six (6) months after the commencement of any operations utilizing a tower, antenna or related

telecommunications facilities, the applicant shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards. If, upon review, the city finds that the facility does not meet federal standards, the city may require corrective action within a reasonable period of time, and if not corrected, may require removal of the telecommunications facilities. Any reasonable costs incurred by the city, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the applicant.
(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 10.0. Permits.

Except as specifically exempted in section 2.0 of this article, towers, antennas and telecommunications facilities are considered structures, requiring issuance of a building permit. In addition to any information required pursuant to Article III, section 1.0 in connection with the issuance of a permit for a tower, antenna or telecommunications facility, the applicant shall, prior to a permit being issued, submit the following to the building official:

A. A maintenance/facility removal agreement, binding the applicant, the property owner (if other than the applicant) and the applicant's and/or owner's successors in interest, to properly maintain the exterior appearance of and ultimately the removal of the tower and telecommunications facilities in compliance with the provisions of this article and any conditions of approval.

B. An agreement to pay to the city all costs of monitoring compliance with, and enforcement of, the maintenance, removal, and/or disposal of any tower and telecommunications facilities, and to reimburse the city for all costs incurred to perform the work required of the applicant by this agreement that the applicant may fail to perform. Such agreement for reimbursement shall include all costs of collection and reasonable attorneys fees.

C. An agreement to allow the city to enter onto the property and undertake any maintenance or removal activities so long as:

1. The building official has provided the applicant written notice requesting the work needed to comply with this article and providing the applicant at least forty-five (45) days to complete it; and a follow up notice of default specifying failure to comply within the time period permitted, and indicating the city's intent to commence the required work within ten (10) days of the notice; and

2. The applicant has not filed an appeal pursuant to Article III section 1.32 within ten (10) working days of the notice of the city's intent to commence the required work. If an appeal is filed, the city shall be authorized to enter the property and perform the necessary work if the appeal is dismissed or final action on it is taken in favor of the city.

3. Notwithstanding anything contained in this section to the contrary, the city shall not be required to provide the notice described herein if there is a significant risk to the public health and safety requiring immediate remedial measures.

D. In addition to any building permit fees and special exception application fees, the applicant shall pay a telecommunications facilities permit fee in an amount that shall be set from time to time by city council resolution. The fees for towers may be set at different levels than the fees set for antennas. The city council resolution may further provide for a waiver of fees in the case of:

1. Construction of new towers with excess capacity, where the applicant commits in advance to allow co-location;
2. Co-location of antennas on existing towers and/or alternative tower structures;
3. Location of antennas on existing alternative tower structures;
4. Other conditions which the city believes will minimize the need for construction of new towers.

E. A statement that the applicant agrees to allow for the potential co-location of additional telecommunications equipment by other providers on the applicant's tower or within the same site location, subject to reasonable conditions.

F. If the applicant seeks a permit for a tower or telecommunications facility on leased property, a copy of the lease agreement, memorandum of lease, or a verified written statement of the landlord indicating that the landlord is permitted to enter into leases with other telecommunications providers.

(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 11.0. Application requirements.

A. Each applicant requesting a special exception under this article shall, in addition to submitting all information required in article III, section 2.4, submit the following information:

1. Scaled elevation view and other supporting drawings, calculations, and documentation, signed and sealed by appropriate registered professionals.
2. Radio frequency coverage and tower height requirements.
3. Other information deemed by the board as necessary to determine compliance with this article.

B. Each applicant for an antenna or tower shall submit an inventory of its existing towers that are either within the city or within one-quarter (¼) mile of the city's boundaries, including specific information about the location, height, and design of each tower. The city may share such information with other organizations seeking to locate antennas within the city, provided however that the city is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

If the applicant owns the electric power or telephone poles in the area, it is not the intent of this article to require a map showing all such poles, however, it is the intent of this article for the applicant to submit a map showing the location and height of all such poles in the vicinity of the property which is the subject of the special exception use.

C. Each applicant for an antenna or tower shall submit a copy of its one- and five-year plans for development of its telecommunications facilities in the city.
(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 12.0. Factors considered in granting special exception permits for towers and antennas.

The city shall consider the following factors in determining whether to issue a special exception for a telecommunications facility:

A. Height of the proposed tower;

B. Proximity of the tower to residential structures and residential district boundaries;

C. Nature of uses on adjacent and nearby properties;

D. Surrounding topography;

E. Surrounding tree coverage and foliage;

F. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

G. Proposed ingress and egress;

H. An evaluation of the applicant's one-and five-year plans for development of its telecommunications facilities within the city, as well as those plans on file from other telecommunications providers;

I. Availability of suitable existing towers and other structures; and

J. Any other information that the city deems reasonably necessary in connection with the review of the application.
(Ord. No. 97-1566, § 65, 6-16-97)

Sec. 13.0. Removal of abandoned antennas and towers.

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The city, in its sole discretion, may require an abandoned tower or antenna to be removed. The owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the city notifying the owner of such abandonment. If such antenna or tower is not removed within said ninety (90) days, the city may remove and dispose of such antenna or tower at the owners expense. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower.
(Ord. No. 97-1566, § 65, 6-16-97)

EXHIBIT B

Clair M. Billington
308 Oak Haven Drive
Keller, Texas 76248
Tele: 817-431-1736
Fax: 817-431-8762

June 14, 2001

Hoover, Alabama

Mr. Mark Lipp
Shook, Hardy, and Bacon, LLP
Hamilton Square
600 14th Street, NW, Suite 800
Washington, DC 20005-2004

Dear Mr. Lipp:

This will acknowledge receipt of the data concerning a proposed communications tower near Hoover, Alabama. You requested that I conduct a feasibility study, and send you a copy of the report. The data submitted for the study is as follows:

Latitude:	33° 22' 41.00"	NAD 27
Longitude:	086° 48' 35.00"	NAD 27
Ground Elevation:	520'	AMSL
Structure Height:	500'	AGL
	1020'	AMSL

The NAD 27 coordinates were converted to NAD 83 for the purpose of the evaluation and study. The NAD 83 coordinates are as follows:

Latitude:	33° 22' 41.39"	NAD 83
Longitude:	086° 48' 34.96"	NAD 83

An evaluation of the proposal disclosed the site would be located approximately 6.5 NM northeast of the Bessemer Airport, Bessemer, Alabama. Study further disclosed the following:

1. The proposed site does not underlie the airspace protected for any of the airport surfaces of the Bessemer Airport.

2. The proposed site does not affect any instrument approach procedures.

3. The proposed site underlies the airspace protected for en-route airways V7 and V115. However, the proposed height is 1029' below the height allowable without affecting the airways.

Based on this study, it is feasible to propose a structure 500' AGL / 1020' AMSL without exceeding FAA obstruction standards. Notice to the FAA would be required for the proposal. Obstruction marking and lighting will be necessary. You should receive a favorable determination in approximately 6 weeks after filing notice with the FAA.

This study did not include the possibility of a potential of an electromagnetic interference (EMI) problem. If the FAA would identify an EMI problem during their study, there are several things that can be done to eliminate the adverse affect. These include a reduction of power, change of frequency, change of antenna type, antenna tilt, or change in FAA's navigational facility frequency. If a change in the FAA's navigational facility frequency is the only solution to the EMI problem, the FAA will require a reimbursable agreement for the cost of the change.

If you have any questions concerning this study, please don't hesitate to call me.

Sincerely,

Clair Billington

Clair M. Billington

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Troy, Alabama

Mr. Mark Lipp
Shook, Hardy, and Bacon, LLP
Hamilton Square
600 14th Street, NW, Suite 800
Washington, DC 20005-2004

Dear Mr. Lipp:

This will acknowledge receipt of the data concerning a proposed communications tower near Troy, Alabama. You requested that I conduct a feasibility study, and send you a copy of the report. The data submitted for the study is as follows:

Latitude:	31° 52' 03.00"	NAD 27
Longitude:	086° 14' 58.00"	NAD 27
Ground Elevation:	380'	AMSL
Structure Height:	1049'	AGL
	1429'	AMSL

The NAD 27 coordinates were converted to NAD 83 for the purpose of the evaluation and study. The NAD 83 coordinates are as follows:

Latitude:	31° 52' 03.55"	NAD 83
Longitude:	086° 14' 57.86"	NAD 83

An evaluation of the proposal disclosed the site would be located approximately 7.58 NM north of Runway 22 End at the Frank Sikes Airport, Luverne, Alabama and 11.64 NM west of Runway 7 End at the Troy Municipal Airport, Troy, Alabama. Study further disclosed the following:

1. The proposal will exceed 77.23 (a)(1) - a height exceeding 500' AGL at its site - by 549'.

2. The proposed site does not underlie the airspace protected for any airport surfaces of the Frank Sikes Airport or the Troy Municipal Airport.

3. The proposed site underlies the secondary area of en-route airway V329. However, the proposed height is approximately 47' below the height allowable without affecting the airway.

4. The proposed site underlies the airspace protected for the initial segment (holding) and missed approach (holding) on the ILS Runway 7 instrument approach procedure to the Troy Municipal Airport. The maximum height allowable without affecting this holding procedure is 1149' AMSL. Therefore, the proposal would affect this procedure by increasing the holding pattern altitude from 2100` AMSL to 2400` AMSL.

5. The proposed site underlies the airspace protected for the initial segment (holding) and missed approach (holding) on the Localizer Runway 7 instrument approach procedure to the Troy Municipal Airport. The maximum height allowable without affecting this holding procedure is 1149' AMSL. Therefore, the proposal would affect this procedure by increasing the holding pattern altitude from 2100` AMSL to 2400` AMSL.

6. The proposed site underlies the airspace protected for the initial segment (holding) and missed approach (holding) on the NDB or GPS Runway 7 instrument approach procedure to the Troy Municipal Airport. The maximum height allowable without affecting this holding procedure is 1149' AMSL. Therefore, the proposal would affect this procedure by increasing the holding pattern altitude from 2100` AMSL to 2400` AMSL.

7. The proposed site underlies the airspace protected for the Cairns Approach Control minimum radar vectoring altitude (MVA) area. The maximum height allowable without affecting the MVA is 1249' AMSL. Construction of the proposed structure will require an increase in the MVA, in the area of the structure, from 2200' AMSL to 2400' AMSL.

8. The proposed site underlies a low-level military training route (IR021). However, the proposed height will not affect this military route.

This study did not include the possibility of a potential of an electromagnetic interference (EMI) problem. If the FAA would identify an EMI problem during their study, there are several things that can be done to eliminate the adverse affect. These include a reduction of power, change of frequency, change of antenna type, antenna tilt, or change in FAA's navigational facility frequency. If a change in the FAA's navigational facility frequency is the only solution to the EMI problem, the FAA will require a reimbursable agreement for the cost of the change.

Based on this study, it is feasible to propose a structure 500' AGL / 880' AMSL without exceeding FAA obstruction standards. Notice to the FAA would be required for the proposal. Obstruction marking and lighting will be necessary.

It is my opinion that the affects on the initial segment (holding) and missed approach (holding) on the instrument approach procedures listed in Items 4, 5, and 6 above can be resolved by a change in the direction of the holding turns. Currently, aircraft holding at this location are required to make left-hand turns. This places the aircraft in the vicinity of the proposed site. The FAA should agree to a change in the holding to right-hand turns. This should place the proposed site outside the airspace protected for the initial segment (holding) and missed approach (holding) on these instrument approach procedures. If the FAA agrees to this change, there will be no affect on the instrument approach procedures.

The affect on the MVA as listed in Item 7 above could be resolved if Cairns Approach Control will agree to increasing the MVA altitude within a 3 NM radius of the site from 2200' AMSL to 2400' AMSL. This may be feasible if the holding pattern turns are amended as stated above.

Because the structure would exceed 500' AGL, it penetrates the airspace available for Visual Flight Rule (VFR) aircraft operations. A review of the aeronautical maps pertaining to this area indicated only one possible VFR route. Pilots traversing from the Troy Municipal Airport to the Greenville Airport, Greenville, Alabama, MAY utilize this route. The proposed site is approximately 1 NM north of a direct line between these two airports. However, the significant adverse affect could be eliminated by the use of high intensity white lights operating 24 hours a day, or by the use of a dual lighting system consisting of high intensity white obstruction lights during the day and red lights at night.

If you have any questions concerning this study, please don't hesitate to call me.

Sincerely,

Clair M. Billington

EXHIBIT C